

# IPSWICH, MASSACHUSETTS ZONING BOARD OF APPEALS

Approved 11.17.2011  
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## Meeting Minutes

October 20, 2011

Pursuant to a written notice posted by the Town Clerk and delivered to all Board members, the Ipswich Zoning Board of Appeals held a meeting on Thursday October 20, 2011 at 7:30 p.m. in Room A at the Town Hall. Members attending were Chairman Robert Gambale, Benjamin Fierro, Roger LeBlanc, William Page, Lewis Vlahos, Alternate member Keri Mac Rae, and Administrative Assistant to the Board Marie Rodgers. Building Inspector Jim Sperber was not present.

**Citizen Queries:** there were none.

Chairman took New Business out of order to address a request from Karl Mayer for an extension of time for reconstruction after a fire at 25 Pleasant Street. Mr. Mayer was present to address his request he submitted in a letter dated 10.13.2011 for a two year extension of time to reconstruct the building damaged by fire at 25 Pleasant Street. The Board reviewed his request.

Abutter Ted Spinale at 27 Pleasant Street expressed his concerns for the new construction should be more in line with what is there. Additionally, he asked the Board to stipulate that Mr. Mayer clean up the debris in the back yard. Chairman Gambale spoke with Mr. Mayer who agreed to clean it up; Chairman assured Mr. Spinale he would address the issue of cleaning up the debris with the Building Inspector.

In response to the Board Mr. Mayer agreed to one year extension, with the stipulation that if he needs more time, he would come back and request another extension.

**Mr. LeBlanc moved the Board grant a one year extension. Mr. Fierro amended the motion subject to the applicant be given thirty days to remove debris and secure the property. The motion passed unanimously as amended. LeBlanc, yes; Gambale, yes; Fierro, yes; Page, yes; Valhos, yes.**

## **Continued Public Hearings:**

**13 Plains Road, Felice Ciardiello** requests a retroactive **Special Permit** pursuant to Section XI.J for the installation of a hydronic heater and a **Variance** pursuant to Section V.I Table of Dimensional and Density Regulations for relief from dimensional requirements for locating the hydronic heater. This hearing is continued from September 15, 2011. Chairman Gambale read the legal notice re-opened the public hearing at 7:42 p.m.

The Petitioner was present, represented by Attorney Rich Kallman. Also in attendance Cory Paulette and Chuck Clark of CP Enterprises dealer for hydronic heaters.

Attorney Kallman reviewed his memo to the ZBA addressing actions taken to reduce impact of the stove on the neighborhood. He spoke to the additional petition submitted for a barn to store wood and asked that the Board considerate at the same time. Chairman Gambale denied the request and said the Board would first continue the hearing for the heater and noted that the suggestion to construct a barn to stockpile wood did not come from the Board.

Attorney Kallman spoke to DEP requirements and expects to have a written certification for compliance with emission standards.

The Petitioner has purchased additional footage of stove pipe to extend the permanent stack (22) twenty- two feet higher than the peak of any roof structure within 150 feet of the heater; to establish a height of (26) twenty-six feet to carry the smoke above and out of the surrounding area.

Attorney Kallman suggested continuing the hearing to the November meeting and he will deliver the certificate from DEP; the additional petition for a special permit and variance to construct a barn will be tabled because there are no plans to show the exact location; in the meantime he suggested the Board set a date for a site visit, for the purpose of viewing 'burn out period'.

Carolyn Ware 16 Plains Road said she was not notified of the new petition and discussion ensued regarding the whys and wherefores. She stated her objection to the smoke the heater will produce in the area.

Al Cuevas, 10 Plains Road spoke in objection to the petition because he opined that there is another area to locate the heater closer to the Petitioner's home and meet all the requirements and could store the wood in his garage. He then spoke to the space requirement of twelve cords of wood and the proposed garage would be much bigger than needed. The triangle area, he suggested is a better area the current location and setting creates a vortex and circulates particulates downward.

Attorney Kallman indicated that he would like to confirm the viability of locating the heater in the triangular area that Mr. Cuevas spoke of, if there is another area that meets DEP requirements the Board has the right to know.

Steve Larson 17 Plains Road related his research on the internet Mass DEP webpage for information regarding hydronic heaters and air pollution; many towns in western mass have banned them. He expressed his concerns for health related issues, his home is directly down wind, his father who visits often has COPD, he agreed with Mr. Cuevas's analysis; he submitted a printout of the DEP web page to the Chairman.

Mr. Brian Mac Whinnie 11 Plains Road related his conversation with Tom Natrio from DEP who has lots of experience and is not in favor of hydronic heaters in densely populated areas; Mr. MacWhinnie would like Mr. Natrio to come before the Board, however, DEP requires the invitation from a town official.

Further discussion took place between the Board, Attorney Kallman and Chuck Clark.

Discussions lead to the site visit, rationale and timing for viewing the heater; the Board reflected on the probability of the Building Inspector lifting the cease & desist order to run the heater; whether a building permit would be issued for the additional thirteen feet of stack will be determined by the Building Inspector.

The Board determined to conduct a site visit on Saturday November 5, 2011 @ 9:00 am.

In response to the Chairman's query regarding permission for neighbors to attend, the answer was no.

**At the request of the Petitioner the hearing was continued until the November 17, 2011 meeting of the Board.**

*In accordance with the revised Open Meeting Law effective July 1, 2010 all documents and exhibits used by the Appeals Board in an open session are listed below:*

*Petition time stamped 5.24.2011 with required submittal documents; Existing conditions Plans (5.23.2011)  
Color photos, Existing Conditions Site Plan Analysis in color, aerial view of existing house at 13 Plains, Existing Conditions Site Plan, septic Design Plan, fourteen pages of objection, letter from Jim Sperber (6.20.2011)*

**44 Mill Road, Frank Wardley** requests a **Special Permit** under Sections XI.J and V Table of Use Regulations to construct a new garage (76' x 30') with private guest house above. This hearing was continued from September 29, 2011. Chairman Gambale read the legal notice re-opened the public hearing at 9:02 p.m. Mr. Wardley was present. In response to the Chairman's query Mr. Wardley stated that the Petitioner is out of the country and he has been granted permission to act on his behalf. Mr. Wardley addressed the issue of the accessory apartment; he has applied for a building permit to dismantle the second kitchen and would like to proceed with his request for the garage and guest house.

The Board and Mr. Wardley discussed the 54'x20' structure to be razed and replaced with a 76'x30' garage with a guest house above. The Board determined that only one SP would be required for both the guest house and garage exceeding 750 square feet.

The Board found and the Petitioner agreed that the guest house would not contain a kitchen or cooking amenities, it cannot be let for compensation, at no time in the future can additional plumbing be added without returning to the ZBA. The owner's address is in Cambridge, his Aunt lives in the house, when he comes to visit he will stay in the guest house. The garage shown on plan A1 will store everyday cars and the larger portion will store the occasional cars. There were no objections from abutters or others.

The Board reviewed the special permit criteria the architectural drawings were sufficiently detailed, negative impact on town service, there's plenty of parking, all utilities will remain on one meter, and the lot is over five acres and cannot be seen from the road, no negative impact on the environment.

Chairman closed the public hearing.

**Mr. Fierro moved to grant the special permit for a guest house in accordance with plan dated 7/10/11 subject to the conditions no future additional plumbing without approval from this board and portion of storage shown on sheet A1 shall be used only for vehicles of the property owner and portion of sheet A2 shall be used for guest vehicles. Mr. Valhos seconded, the motion passed unanimously.**

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**12 Woods Lane Karl and Debra Muench** requests three **(3) Variances** under Section XI.K and VI.B Table of Dimensional and Density Regulations for (1) relief from Minimum lot width and (2) relief from Minimum lot frontage; and under Section VI.G.4 for relief from Minimum lot width between street frontage and front of the Principal Building to subdivide the lot and convert the barn to a residential dwelling at **12 Woods Lane**. This hearing was continued from September 29, 2011. Chairman Gambale read the legal notice re-opened the public hearing at 9:35 p.m. Discussion was held regarding observations made at the site visit conducted by the Board, on Saturday October 15, 2011 @ 9:00 am on site. With the exception of Mr. Fierro, all Board members attended the site visit. Attorney Kresser spoke to issue brought up by Attorney Nestor concerning a common driveway. He submitted a letter to the Board indicating that there are no intentions to have a common drive; reconfiguration is proposed. (No copy provided to file)

Attorney Kresser submitted a letter speaking to hardship to the Board. (No copy provided to file)

Discussion took place between the Board, Attorney Nestor and Attorney Kresser concerning the proposal, the question of compliance, hardship criteria, options with Planning Board, process and procedures.

The Board members reviewed and expressed their opinions.

**Attorney Kresser requested to withdraw the petition without prejudice.**

In response to Ross York 24 Woods Lane, the Board explained the request to withdraw process.

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**New Public Hearings:**

**43 Howe Street, Paul LaPlante** requests a **Special Permit** pursuant to Sections XI.J and V.D. Table of Use Regulations to keep chickens for personal use on less than one acre. Chairman Gambale read the legal notice and opened the public hearing at 10:41 p.m.

The Petitioner was present and explained he has live in Ipswich for fifteen years and has kept chickens the past five years. He moved to Ipswich considering it was a more rural area. He has nine chickens, no roosters; the pen is 8'x12' attached is the 12'x12' screened in run; the chickens never roam free. The shed meets the twenty foot set back requirements on each side. The eggs and chickens are consumed by his family. He related a visit from the ACO Matt Antczak who said it was well built and has no problems with him keeping chickens. He related his conversation with the Building Inspector who said he had no problem with him keeping chickens. He has not had any problem with wild animals, he never has had a complaint from neighbors, he has no health issues, he described his maintenance practice of using pine shavings and three inches of sand that he rakes every month and disposes of manure in his compost heap; he mentioned the manure is sometimes sought after by those who want it for garden fertilizer.

Abutters Richard and Sandy Murray of 41 Howe Street spoke in objection to the stink; expressed concerns of smells and declared that it has never been a problem until this past summer.

John Brown 45 Howe Street stated his objections to the smell, noting that only this past summer has it become a problem.

Abutter Fred Fullerton at 44 Howe Street spoke in support, saying the Petitioner's chicken pen is immaculate and his lot is unbelievably well maintained and opined that it is how chickens should be kept.

Chairman spoke to a letter of objection from Beverly Benedetto and gave a copy to the Petitioner to read. The Board closed the Public Hearing.

The Board discussed Special Permit criteria and determined compliance and cited the Right to Farm bylaw passed at Town Meeting 2009 allowing and supporting agriculture activity such as keeping chickens. The Board found no evidence of impact on health or welfare; conditions were discussed to limit the number of chickens to be kept, no rooster and manure disposed of offsite; Petitioner agreed to the conditions.

**Mr. Fierro moved that the Board grant the Special Permit as requested by the Petitioner from the Provisions of the Protective Zoning Bylaw Sections XI.J and V.D. Table of Use Regulations to keep no more than five chickens for personal use only and no roosters, subject to reduction of brood from eight to five within ninety days, discontinue disposal of chicken waste into the compost and return to this Board at the regularly scheduled meeting in September 2012 for review. Mr. Gambale seconded, the motion passed with a vote of four to one. Mr. LeBlanc abstained.**

**Mr. Gambale, yes; Mr. Fierro, yes; Mr. Page, yes; Mr. Valhos, no; Ms. MacRea, yes.**

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**44 Howe Street, Elizabeth Fullerton** requests a **Special Permit** pursuant to Sections XI.J and V.D. Table of Use Regulations to keep chickens for personal use on less than one acre. Chairman Gambale read the legal notice and opened the public hearing at 11:45 p.m. Mr. LeBlanc recused himself and left the meeting.

The Petitioner and her husband were present and explained her request to keep chickens for the fresh eggs. They moved into the neighborhood earlier this spring. She kept chickens all her life. Currently, there are eight chickens' four ducks and no roosters; the manure is composted. The coop is secure and is surrounded by a fence to keep out predators. She acknowledge the importance of keeping the cage clean and is diligent about cleaning and compost the soiled shavings with the garden compost away from main living area. She described the topography of the lot it slopes down and abuts a wooded lot. She agreed to the Board's conditions placed on the previous application. There were no objections for abutters or others. The Board closed the Public Hearing.

The Board discussed Special Permit criteria and determined compliance.

**Mr. Fierro moved that the Board grant the Special Permit as requested by the Petitioner from the Provisions of the Protective Zoning Bylaw Sections XI.J and V.D. Table of Use Regulations to keep no more than five chickens for personal use only and no roosters, subject to reduction of brood from eight to five within ninety days, cease disposal of chicken waste into the compost and return to this Board at the regularly scheduled meeting in September 2012 for review. Mr. Gambale seconded, the motion passed with a vote of four to one . Mr. LeBlanc abstained.**

**Mr. Gambale, yes; Mr. Fierro, yes; Mr. Page, yes; Mr. Valhos, no; Ms. MacRea, yes.**

*In accordance with the revised Open Meeting Law effective July 1, 2010 all documents and exhibits used by the Appeals Board in an open session are listed below: : Petition and supporting documentation stamped in September 27, 2011.*

**13 Plains Road, Felice Ciardiello** requests a **Variance** and **Special Permit** pursuant to Sections XI-K and XI-J and VI.B Table of Dimensional and Density Regulations to construct an accessory structure within the front set back and to reduce the right side set back no more than 50% of the requirement for a barn (24' X 30').

**At the request of the Petitioner the hearing was continued until the November 17, 2011 meeting of the Board.**

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#### **Approval of Minutes:**

Mr. Gambale moved to approve the minutes of September 29, 2011 with minor edits, Mr. Fierro seconded, the vote was unanimously in favor.

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#### **Adjourn:**

It was moved, seconded and unanimously voted to adjourn at 12:01 pm.

Respectfully submitted,

Marie Rodgers  
Administrative Assistant  
Zoning Board of Appeals

These minutes were approved by the Board on November 17, 2012 with minor edits.